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ORIGINAL
FILED

FEB 18 2004

RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

IpLearn, LLC,

Plaintiff,

C04 00685

Civil Action No.

MHP

COMPLAINT AND JURY DEMAND

ADR E-filing

v.

Click2learn.com, Inc.,

Defendant.

COMPLAINT AND JURY DEMAND

HOWARD
RICE
NEMEROVSKI
CANADY
FALK
& RABKIN
A Professional Corporation

COMPLAINT

For Plaintiff IpLearn, LLC's Complaint against Defendant Click2learn.com, Inc., Plaintiff, by and through its attorneys, alleges the following:

**ALLEGATIONS COMMON TO ALL COUNTS OF THE
COMPLAINT**

NATURE OF THIS ACTION

1. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§101 *et seq.*, including 35 U.S.C. §§271 and 281-285.

THE PARTIES

2. IpLearn, LLC ("IpLearn" or "Plaintiff") is a corporation organized under the laws of California with its principal place of business in this district located at 1807 Limetree Lane, Mountain View, California, 94040.

3. Upon information and belief, Defendant Click2learn.com, Inc. ("Click2learn" or "Defendant") is a corporation doing business in this district organized under the laws of the State of Delaware with a regular and established place of business at 2955 Champion Way, Suite #192, Tustin Ranch, California 92782, and its principal place of business at 110 110th Ave NE, Bellevue, Washington 98004.

JURISDICTION, VENUE, AND INTRADISTRICT VENUE

4. This Court has subject matter jurisdiction by virtue of 28 U.S.C. §§1331 and 1338. Venue in this District is proper pursuant to 28 U.S.C. §1391 and 1400.

5. This action is properly assigned to the San Jose Division of this Court under Civil Local Rule 3-2(c) because a substantial part of the events or omissions which give rise to the claims stated herein occurred, and a substantial part of the property that is the subject of this action is situated in San Jose, in that Plaintiff is located in Mountain View, California, in this Division.

1 **COUNT 1—PATENT INFRINGEMENT: US PATENT 5,779,486**

2 6. On July 14, 1998, U.S. Patent No. 5,779,486 (“the ‘486 patent”), entitled
3 “Methods and Apparatus to Assess and Enhance a Student’s Understanding in a Subject,”
4 was duly and legally issued to Chi Fai Ho and Peter P. Tong by the United States Patent and
5 Trademark Office (Exhibit A).

6 7. IpLearn is the owner of all right, title and interest in and to the ‘486 patent,
7 including the right to sue and collect damages for past infringement.

8 8. Upon information and belief, Click2Learn has infringed and is now infringing
9 one or more claims of the ‘486 patent by making, using, offering to sell, or selling within the
10 United States and/or importing into the United States the claimed subject matter in at least
11 the form of a product referred to by Click2Learn as the ASPENTM Enterprise Productivity
12 Suite, including at least the ASPENTM Learning Content Management Server (“LCMS”), the
13 ASPENTM Learning Management Server (“LMS”), and the ASPENTM Virtual Classroom
14 Server (“VCS”), all without the authorization or consent of IpLearn.

15 9. Upon information and belief, Click2learn’s acts constitute direct and/or
16 contributory and/or inducement of infringement of the ‘486 patent in violation of the patent
17 laws of the United States, 35 U.S.C. §§271 and 281-285.

18 10. By reason of Click2learn’s acts alleged herein, IpLearn has suffered, is suffering,
19 and will continue to suffer irreparable damage, and unless Click2learn is restrained from
20 continuing its wrongful acts, the damage to IpLearn will continue.

21 11. Upon information and belief, Click2learn’s infringing activities have been and
22 continue to be deliberate and willful. This allegation is specifically identified as one which
23 is likely to have evidentiary support after a reasonable opportunity for further investigation
24 or discovery.

25 **COUNT 2—PATENT INFRINGEMENT: US PATENT 5,934,909**

26 12. On August 10, 1999, U.S. Patent No. 5,934,909 (“the ‘909 patent”), entitled
27 “Methods and Apparatus to Assess and Enhance a Student’s Understanding in a Subject,”
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1 was duly and legally issued to Chi Fai Ho and Peter P. Tong by the United States Patent and
2 Trademark Office (Exhibit B).

3 13. IpLearn is the owner of all right, title and interest in and to the '909 patent,
4 including the right to sue and collect damages for past infringement.

5 14. Upon information and belief, Click2Learn has infringed and is now infringing
6 one or more claims of the '909 patent by making, using, offering to sell, or selling within the
7 United States and/or importing into the United States the claimed subject matter in at least
8 the form of a product referred to by Click2Learn as the ASPENTM Enterprise Productivity
9 Suite, including at least the ASPENTM Learning Content Management Server ("LCMS"), the
10 ASPENTM Learning Management Server ("LMS"), and the ASPENTM Virtual Classroom
11 Server ("VCS"), all without the authorization or consent of IpLearn.

12 15. Upon information and belief, Click2learn's acts constitute direct and/or
13 contributory and/or inducement of infringement of the '909 patent in violation of the patent
14 laws of the United States, 35 U.S.C. §§271 and 281-285.

15 16. By reason of Click2learn's acts alleged herein, IpLearn has suffered, is suffering,
16 and will continue to suffer irreparable damage, and unless Click2learn is restrained from
17 continuing its wrongful acts, the damage to IpLearn will continue.

18 17. Upon information and belief, Click2learn's infringing activities have been and
19 continue to be deliberate and willful. This allegation is specifically identified as one which
20 is likely to have evidentiary support after a reasonable opportunity for further investigation
21 or discovery.

22 23 **COUNT 3—PATENT INFRINGEMENT: US PATENT 6,118,973**

24 18. On September 12, 2000, U.S. Patent No. 6,118,973 ("the '973 patent"), entitled
25 "Methods and Apparatus to Assess and Enhance a Student's Understanding in a Subject,"
26 was duly and legally issued to Chi Fai Ho and Peter P. Tong by the United States Patent and
27 Trademark Office (Exhibit C).

28 19. IpLearn is the owner of all right, title and interest in and to the '973 patent,

1 including the right to sue and collect damages for past infringement.

2 20. Upon information and belief, Click2Learn has infringed and is now infringing
3 one or more claims of the '973 patent by making, using, offering to sell, or selling within the
4 United States and/or importing into the United States the claimed subject matter in at least
5 the form of a product referred to by Click2Learn as the ASPEN™ Enterprise Productivity
6 Suite, including at least the ASPEN™ Learning Content Management Server ("LCMS"), the
7 ASPEN™ Learning Management Server ("LMS"), and the ASPEN™ Virtual Classroom
8 Server ("VCS"), all without the authorization or consent of IpLearn.

9 21. Upon information and belief, Click2learn's acts constitute direct and/or
10 contributory and/or inducement of infringement of the '973 patent in violation of the patent
11 laws of the United States, 35 U.S.C. §§271 and 281-285.

12 22. By reason of Click2learn's acts alleged herein, IpLearn has suffered, is suffering,
13 and will continue to suffer irreparable damage, and unless Click2learn is restrained from
14 continuing its wrongful acts, the damage to IpLearn will continue.

15 23. Upon information and belief, Click2learn's infringing activities have been and
16 continue to be deliberate and willful. This allegation is specifically identified as one which
17 is likely to have evidentiary support after a reasonable opportunity for further investigation
18 or discovery.

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20 **COUNT 4—PATENT INFRINGEMENT: US PATENT 6,126,448**

21 24. On October 3, 2000, U.S. Patent No. 6,126,448 ("the '448 patent"), entitled
22 "Computer-Aided Learning Methods and Apparatus for a Job," was duly and legally issued
23 to Chi Fai Ho and Peter P. Tong by the United States Patent and Trademark Office
24 (Exhibit D).

25 25. IpLearn is the owner of all right, title and interest in and to the '448 patent,
26 including the right to sue and collect damages for past infringement.

27 26. Upon information and belief, Click2Learn has infringed and is now infringing
28 one or more claims of the '448 patent by making, using, offering to sell, or selling within the

1 United States and/or importing into the United States the claimed subject matter in at least
2 the form of a product referred to by Click2Learn as the ASPEN™ Enterprise Productivity
3 Suite, including at least the ASPEN™ Learning Content Management Server (“LCMS”), the
4 ASPEN™ Learning Management Server (“LMS”), and the ASPEN™ Virtual Classroom
5 Server (“VCS”), all without the authorization or consent of IpLearn.

6 27. Upon information and belief, Click2learn’s acts constitute direct and/or
7 contributory and/or inducement of infringement of the ‘448 patent in violation of the patent
8 laws of the United States, 35 U.S.C. §§271 and 281-285.

9 28. By reason of Click2learn’s acts alleged herein, IpLearn has suffered, is suffering,
10 and will continue to suffer irreparable damage, and unless Click2learn is restrained from
11 continuing its wrongful acts, the damage to IpLearn will continue.

12 29. Upon information and belief, Click2learn’s infringing activities have been and
13 continue to be deliberate and willful. This allegation is specifically identified as one which
14 is likely to have evidentiary support after a reasonable opportunity for further investigation
15 or discovery.

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17 **COUNT 5—PATENT INFRINGEMENT: US PATENT 6,398,556**

18 30. On June 4, 2002, U.S. Patent No. 6,398,556 (“the ‘556 patent”), entitled
19 “Inexpensive Computer-Aided Learning Methods and Apparatus for Learners,” was duly
20 and legally issued to Chi Fai Ho, John P. Del Favero, Jr. and Peter P. Tong by the United
21 States Patent and Trademark Office (Exhibit E).

22 31. IpLearn is the owner of all right, title and interest in and to the ‘556 patent,
23 including the right to sue and collect damages for past infringement.

24 32. Upon information and belief, Click2Learn has infringed and is now infringing
25 one or more claims of the ‘556 patent by making, using, offering to sell, or selling within the
26 United States and/or importing into the United States the claimed subject matter in at least
27 the form of a product referred to by Click2Learn as the ASPEN™ Enterprise Productivity
28 Suite, including at least the ASPEN™ Learning Content Management Server (“LCMS”), the

1 ASPEN™ Learning Management Server (“LMS”), and the ASPEN™ Virtual Classroom
2 Server (“VCS”), all without the authorization or consent of IpLearn.

3 33. Upon information and belief, Click2learn’s acts constitute direct and/or
4 contributory and/or inducement of infringement of the ‘556 patent in violation of the patent
5 laws of the United States, 35 U.S.C. §§271 and 281-285.

6 34. By reason of Click2learn’s acts alleged herein, IpLearn has suffered, is suffering,
7 and will continue to suffer irreparable damage, and unless Click2learn is restrained from
8 continuing its wrongful acts, the damage to IpLearn will continue.

9 35. Upon information and belief, Click2learn’s infringing activities have been and
10 continue to be deliberate and willful. This allegation is specifically identified as one which
11 is likely to have evidentiary support after a reasonable opportunity for further investigation
12 or discovery.

13 **COUNT 6—PATENT INFRINGEMENT: US PATENT 6,685,478**

14 36. On February 3, 2004, U.S. Patent No. 6,685,478 (“the ‘478 patent”), entitled
15 “Inexpensive Computer-Aided Learning Methods and Apparatus for Learners,” was duly
16 and legally issued to Chi Fai Ho, John P. Del Favero, Jr. and Peter P. Tong by the United
17 States Patent and Trademark Office (Exhibit F).

18 37. IpLearn is the owner of all right, title and interest in and to the ‘478 patent,
19 including the right to sue and collect damages for past infringement.

20 38. Upon information and belief, Click2Learn has infringed and is now infringing
21 one or more claims of the ‘478 patent by making, using, offering to sell, or selling within the
22 United States and/or importing into the United States the claimed subject matter in at least
23 the form of a product referred to by Click2Learn as the ASPEN™ Enterprise Productivity
24 Suite, including at least the ASPEN™ Learning Content Management Server (“LCMS”), the
25 ASPEN™ Learning Management Server (“LMS”), and the ASPEN™ Virtual Classroom
26 Server (“VCS”), all without the authorization or consent of IpLearn.

27 39. Upon information and belief, Click2learn’s acts constitute direct and/or

1 contributory and/or inducement of infringement of the '478 patent in violation of the patent
2 laws of the United States, 35 U.S.C. §§271 and 281-285.

3 40. By reason of Click2learn's acts alleged herein, IpLearn has suffered, is suffering,
4 and will continue to suffer irreparable damage, and unless Click2learn is restrained from
5 continuing its wrongful acts, the damage to IpLearn will continue.

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7 **COUNT 7—PATENT INFRINGEMENT: US PATENT 6,688,888**

8 41. On February 10, 2004, U.S. Patent No. 6,688,888 ("the '888 patent"), entitled
9 "Computer-aided Learning System and Method," was duly and legally issued to Chi Fai Ho
10 and Peter P. Tong by the United States Patent and Trademark Office (Exhibit G).

11 42. IpLearn is the owner of all right, title and interest in and to the '888 patent,
12 including the right to sue and collect damages for past infringement.

13 43. Upon information and belief, Click2Learn has infringed and is now infringing
14 one or more claims of the '888 patent by making, using, offering to sell, or selling within the
15 United States and/or importing into the United States the claimed subject matter in at least
16 the form of a product referred to by Click2Learn as the ASPENTM Enterprise Productivity
17 Suite, including at least the ASPENTM Learning Content Management Server ("LCMS"), the
18 ASPENTM Learning Management Server ("LMS"), and the ASPENTM Virtual Classroom
19 Server ("VCS"), all without the authorization or consent of IpLearn.

20 44. Upon information and belief, Click2learn's acts constitute direct and/or
21 contributory and/or inducement of infringement of the '888 patent in violation of the patent
22 laws of the United States, 35 U.S.C. §§271 and 281-285.

23 45. By reason of Click2learn's acts alleged herein, IpLearn has suffered, is suffering,
24 and will continue to suffer irreparable damage, and unless Click2learn is restrained from
25 continuing its wrongful acts, the damage to IpLearn will continue.

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PRAYER FOR RELIEF

28 **WHEREFORE**, IpLearn seeks judgment and relief against Click2learn including:

COMPLAINT AND JURY DEMAND

FEB-18-04

03:57PM FROM HOWARD, RICE, ET AL (415) 217-3910

- 1 1. a permanent injunction enjoining and restraining Click2learn and its agents,
2 attorneys, servants, successors, assigns, employees and all those in privity or in active
3 concert and participation with them, or any of them, from infringing the '486 patent, the
4 '909 patent, the '973 patent, the '448 patent, the '556 patent, the '478 patent, and the '888
5 patent;
- 6 2. entry of judgment for damages together with prejudgment interest, to compensate
7 IpLearn for the infringement by Click2learn of the patent rights of IpLearn;
- 8 3. entry of judgment for up to treble the actual damages found or assessed by the
9 trier of fact, because of the willful nature of the infringement by Click2learn of the patent
10 rights of IpLearn;
- 11 4. entry of judgment for costs, expenses, and reasonable attorneys' fees incurred by
12 IpLearn in prosecuting this action to vindicate its patent rights;
- 13 5. an assessment of costs, other expenses and such other and further relief as the
14 Court may deem just and proper.

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DEMAND FOR JURY TRIAL

IpLearn hereby demands a jury trial on all issues of its Complaint so triable.

DATED: February 16, 2004.

Respectfully,

NEIL A. SMITH
HOWARD RICE NEMEROVSKI CANADY
FALK & RABKIN
A Professional Corporation

By:

NEIL A. SMITH

Attorneys for Plaintiff IPLEARN

Of Counsel

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